



**BEFORE THE TAMIL NADU REAL ESTATE
REGULATORY AUTHORITY (TNRERA)
(Tamil Nadu, Andaman & Nicobar Islands)
at Egmore, Chennai – 600 008**

[Under the Real Estate (Regulation and Development) Act, 2016]

C.No.256/2021

04th day of November, 2022

**Coram : Thiru K. Gnanadesikan, I.A.S. (Retired), Chairperson
Adv. V. Jeyakumar, Member
Thiru Sunil Kumar, I.P.S. (Retired), Member**

Thiru Vimal Kumaaran Durairaj]
Represented by his Power of Attorney] Complainant
Thiru Jayaseelan Kaleeswaran]

Versus

M/s. Casa Grande Homes Private Ltd.]
Represented by its Authorised Signatory] Respondent
Ms. Umma Salma]

The above Complaint came up for final hearing before this Authority in the presence of M/s. Rahul J. Krishnan - Counsel for Complainant and of M/s. Ganesh & Ganesh - Counsel for Respondent and upon hearing the arguments, this Authority passes the following:

FINAL ORDER

The Complainant has submitted in the Complaint that based on the assurances of the Respondent Promoter M/s. Casa Grande Homes private Limited, he had agreed to purchase a residential unit bearing Apartment

No.C302 in 3rd Floor measuring about 1244 sq.ft. carpet area comprising in super built up area of 181.7 sq.ft. in the residential complex along with one tandem covered car park and 129 sq.ft. of private terrace area in the residential project "Casa Grande ECR 14" at Kanathur Reddykuppam Village, Thiruporur Taluk, Kancheepuram District.

2. The Complainant has further submitted that he had entered into a Sale Deed on 20.01.2021 for consideration of Rs.7,99,470/- and Construction Agreement dated 20.01.2021 for a consideration of Rs.71,61,506/- and that the total consideration of the apartment is Rs.89,66,293/- which is inclusive of GST and money towards the corpus fund.

3. The Complainant has further submitted that he has advanced a total sum of Rs.86,02,776/- to the Respondent Promoter and a remainder payment of Rs.3,63,517/- is to be paid. The Complainant has stated that now the Respondent Promoter is demanding an interest towards delay of payment vide e-mail which cannot be considered as a demand letter towards interest in delay of payment despite a 2 year delay in delivery of possession on the part of the Respondent Promoter. The Complainant has further stated that the Respondent Promoter has refused to hand over possession of the apartment on payment of principal amount by stating that the willful negligence is on the part of the Complainant. Now nearly two years have passed and possession of the said apartment is yet to be handed over to the Complainant.

4. The Complainant has prayed for the following reliefs in the Complaint.

- (i) Direction to the Respondent to hand over possession of the aforementioned apartment to the complainant within a period of 30 days from the date of passing of orders by this Authority.
- ii) Direction to penalize the Respondents for non-compliance of Sections 11 (3) (a), 11 (3) (b), 12 and 13 as stipulated under the RERA Act, 2016.
- (iii) Direction to the Respondent to acquire a completion certificate and hand over a copy of the same to the complainant within a period of 30 days from the date of passing of orders by this Authority.
- (iv) Direction to the Promoter to hand over the apartment which has been allotted to the complainant free from any charge, encumbrance or lien.
- (v) Direction to the Respondent to provide the complainant with a stage wise progress report of the construction as stipulated under the Section 11 3 (a) and Section 11 3(b) of the RERA Act, 2016.
- vi) Direction to the Respondent to adjudicate any dispute with respect to the interest towards delayed payment on part of the complainant before the Adjudicating Officer after delivery of possession to the complainant upon payment of the entire principal amount as agreed between the complainant and the Respondent Promoter.
- (vii) The Complainant craves leave of this Authority to approach the Adjudicating Officer for compensation due to delay in delivery of possession and damages from the Respondent Promoter.

(viii) Pass such further or other orders that this Authority may deem fit and proper and thus render justice.

5. In the Counter Affidavit the Respondent has submitted that the Complainant was allotted with a Flat bearing No.C-302 having carpet area of 1244 sq.ft. together with 1817 sq.ft. undivided share of super built up area towards common in the residential project named as "CASA Grande ECR14" along with one tandem covered car park and 129 sq.ft. of private terrace area. The Respondent has submitted that the said project was also registered with RERA, Chennai on 23.08.2017 having registration No.TN/01/Building/0030/2017.

6. The Respondent has also submitted that the Schedule of Payment is also provided in the Construction Agreement. But the Complainants have not adhered to the schedule of payment. As per the terms of the Construction Agreement, it was agreed to be delivered on 31.07.2021. The project got completed by the Respondent within the timelines and the Complainant has signed a NOC pertaining to handing over of the said apartment on 21.03.2021. The Respondent has also stated that it had applied for the Completion Certificate in February, 2021. Therefore, there is no delay on the part of the Respondent to complete the construction within the timelines stipulated in the Construction Agreement. Also the Respondent has submitted that the payment calculation sheet of the Respondent clearly elucidates the delay in payment by the Complainant on various stages.

7. The Respondent has further submitted that the total consideration for Flat C-302 is Rs.90,62,581/- The Complainants had totally paid a sum of Rs.86,02,777/- (INCL modification) till date after committing several defaults. Thus, a sum of Rs.4,59,804/- is still pending due and payable by

the Complainant to the Respondent as per the agreed terms. The Respondent has further stated that the statement of accounts filed by the Respondent clearly evidences the defaults committed by the Complainant towards the stage wise payments as demanded on various dates. The Respondent has also referred to the e-mail dated 06.09.2021 sent to the Complainant which details about the delayed payments and the correspondent interest charged relating to the same (page No.25 of the typed set of documents filed by the Complainant). The Respondent has also stated that as a procedural compliance, the Respondent had sent the above said mail but the Respondent subsequently as a gesture of ensuring customer welfare and to maintain good relationship with the complainant, the Respondent had requested the Complainant to sign an interest waiver form vide e-mail dated 16.05.2020 but the Complainant had refused to sign the same.

8. The Respondent has further stated that after the complete lift of COVID 19 lockdown, the Respondent had applied for Completion Certificate on 19.02.2021 for which the competent Authority had replied on 11.03.2021 by stating that the completion certificate is not applicable for this project due to the reason that the planning permission was granted before 16.04.2018. The copy of the said reply by the competent authority is filed with this Counter (page No.7 of typed set of documents filed by the Respondent).

9. The Respondent has further stated that the project was completed and other several Allottees had also taken possession of their respective flats. The Complainant flat is also ready for handing over of possession and the same was informed to the Complainant and NOC was also signed by the Complainant which is also filed along with this Counter

(page No.8 to 11 of the typed set of documents filed by the Respondent). Hence, the delay in handing over of the flat is only because of pending due a sum of Rs.4,59,804/-

10. This Authority has examined the Complaint, the Counter affidavit filed by the Respondent Promoter and the arguments made by both sides along with written submission of arguments filed by them carefully.

11. It is seen from the Construction Agreement that in para-4(a) of the Construction Agreement that the Promoter shall endeavour to complete the construction of the apartment by 31.07.2021. The Respondent Promoter has also stated that the Complainant has signed the NOC pertaining to handing over of the apartment on 21.03.2021.

12. Therefore, this Authority directs the Respondent Promoter to handover the possession of the apartment to the Complainant Allottee before 31.12.2022 after collecting the balance sale consideration strictly as per the Construction Agreement.

13. As the Respondent Promoter had offered an interest waiver to the Complainant Allottee vide e-mail dated 16.05.2020 as stated by the Respondent Promoter, the Respondent Promoter shall give effect to the interest waiver as already offered by him.

14. It is seen that the Complainant Allottee has been making payments to the Respondent Promoter from 06.03.2018 onwards. The Complainant Allottee has paid Rs.1,08,370/- and Rs.8,91,629/- on 06.03.2018 which is more than 10% of the total sale consideration of the apartment which is Rs.89,66,293/-

15. It is also seen that the Respondent Promoter has not executed the Agreement for Sale and has proceeded to collect further payments and executed the Sale Deed and the Construction Agreement only on 20.01.2021 thereby contravening Section 13(1) of the Act.

16. The Authority notes that the Complainant Allottee has paid Rs.86,02,776 till the Sale Deed and Construction Agreement were executed on 20.01.2021.

17. Therefore, under Section 61 of the Act, this Authority imposes a penalty of Rs.3 lakhs for non execution of Agreement for Sale even after collecting more than 10% of the total Sale Consideration of the Apartment. This penalty shall be paid before 31.01.2023.

18. Regarding the direction to the Respondent Promoter to obtain the Completion Certificate for this real estate project, this Authority accepts the submission made by the Respondent Promoter that the Planning Permission has been obtained for this real estate project prior to issue of G.O.Ms. No.53, H&UD Dept. dated 16.04.2018. Therefore, obtaining Completion Certificate in respect of this real estate project in DTCP area does not arise as clarified by the Deputy Director / Member Secretary, LPA, Chengalpattu.

19. With the above findings and directions, this Complaint is disposed of.

Sd/-...04.11.2022

Sd/-...04.11.2022

Sd/-...04.11.2022

MEMBER (J), TNREA

MEMBER (S), TNRERA

CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER


ADMINISTRATIVE OFFICER


4.11.22

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